IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1338 of 2007

S.Balamani .. Petitioner

Vs

1. State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Co-operation, Food and Consumer
   Protection Department,
   Fort St. George, Chennai.

2. The Commissioner of Police,
   Coimbatore City, Coimbatore.

3. Union of India,
   Rep. by its Secretary to Government,
   Food and Consumer Protection
   Department, Ministry of Consumer
   Affairs and Public Distribution,
   Govt. of India, New Delhi. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus appropriate writ or order or Direction in the nature of Writ calling for records pertaining to the detenu Mr.P.Samuel son of Mr.Ponnaiyah Nadar is detained under Tamil Nadu Act 7 of 1980 as BLACK MARKETER at Central Prison, Coimbatore, by the Second Respondent vide his order in C.No.07/PBMMSEC.Act/IS/2007 dated 22.08.2007 on the file of the Second Respondent herein and to quash the same and to direct the respondents herein to produce the body of the detenu Mr.P.Samuel son of Mr.Ponnaiyah Nadar before this court and set him at liberty.

For Petitioner : Mr.M.Sathish Kumar

For Respondents: Mr.P.Kumaresan,
Addl. Public Prosecutor.

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ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, wife of the detenu by name P.Samuel, who was incarcerated at Central Prison, Coimbatore, by an order dated 22.8.2007 of the second respondent under the provisions of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7/1980) branding him as a Black Marketeer, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention dated passed in C.No.07/PBMMSEC.Act/IS/2007, to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

2. On 11.8.2007, the police party attached to Civil Supplies CID Unit, Coimbatore, inspected the premises belonged to one Samuel, the detenu herein, on the foot that the rice meant for Public Distribution System is being used illegally, found that the ration rice has been grinded as flour and sold in the form of 'Idly', 'Dosa', etc. On the basis of the voluntary confession given by the detenu that one Sundar used to give ration rice to him and using the same, he grinded it as flour and sold in the aforesaid forms, he was arrested and the wet grinders and samples of four were seized. A case in Coimbatore Civil Supplies CID Crime No.396/2007 was registered under Section 6(4) of T.N.S.C. (RDCS) Order 1982 r/2 7(1) a (ii) of E.C. Act. and the detenu was produced before the Judicial Magistrate No.IV, incharge of Judicial Magistrate NO.II, Coimbatore, who remanded him to judicial custody.

3. The second respondent, taking note of the above ground case and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of supply of essential commodities to the community, ordered his detention dubbing him as a Black Marketeer.

4. Since the learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay on the part of the detaining authority in sending the remarks to the Government, we do not propose to go into other aspects, as the said ground has to succeed.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed

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according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the case on hand, admittedly, objecting to the order of detention dated 22.8.2007, a representation was made on behalf of the detenu on 9.10.2007, which was received by the Government on 10.10.2007. Remarks were called for from the detaining authority on 11.10.2007, who, in turn, called for parawar remarks from the sponsoring authority on 16.10.2007. The detaining authority, though received the same on 19.10.2007, sent the same to the Government only on 30.10.2007, i.e. after a delay of eleven days. Even if we exclude

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the intervening holidays, viz. 20.10.2007, 21.10.2007, 27.10.2007 and 28.10.2007, (being Saturdays and Sundays), still there is delay of seven days in sending the remarks to the Government, which is not properly explained. Thereafter, on receipt of the remarks on 31.10.2007, the file was circulated on 2.11.2007, on which date, the Under Secretary and Deputy Secretary considered the same. The Secretary (CF & CP) and the Secretary (Law) considered the file on 5.11.2007 and 6.11.2007 respectively and the Minister for Food dealt with the file on 6.11.2007 and rejected the same. The rejection letter was prepared on 7.11.2007, sent to the detenu on 9.11.2007 and served on him on 10.11.2007.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is delay of seven days on the part of the detaining authority in sending the remarks to the Government, which is admittedly unexplained and inexcusable and hence, the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

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In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Secretary to the Government.,
   Food, Co-operation and Consumer
   Protection Department, Chennai-9.

2. The Commissioner of Police,
   Coimbatore City, Coimbatore.

3. The Secretary to the Government,
   Food and Consumer Protection
   Department, Ministry of Consumer
   Affairs and Public Distribution,
   Govt. of India, New Delhi.

4. The Superintendent
   Central Prison, Coimbatore.

5. The Public Prosecutor,
   High Court, Madras.

6. The Joint Secretary to the Government,
Public [Law and Order] Department,
Fort St. George, Chennai 9.

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